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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

KOUROSH IZADPANAHI,

Plaintiff and Appellant,

v.

MICHELLE O'KEEFE, et al.,

Defendants and Respondents.

B265140

(Los Angeles County
Super. Ct. No. LC101641)

APPEAL from an order of the Superior Court of Los Angeles County,
Huey P. Cotton, Judge. Affirmed.

Kourosh Izadpanahi, in pro. per. for Plaintiff and Appellant.

Law Offices of Leigh Datzker and Leigh Datzker for Defendants and
Respondents.

Plaintiff and appellant Kourosh Izadpanahi, a real estate agent, represented potential buyers of real estate owned by the Hope Newton Trust. After escrow opened, the parties failed to agree to terms, and, at the buyers' request, the escrow was cancelled. Shortly thereafter, using a new real estate agent, the buyers successfully purchased the property. Izadpanahi sought, but was denied, a share of the commission on the sale. The trial court sustained the demurrer of the Trust and its trustee without leave to amend and dismissed the action as to those parties. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Izadpanahi alleged, in his Second Amended Complaint filed on November 20, 2014, that he contracted with Michelle O'Keefe and Steven Daff in January 2014, to represent them as their agent for the purchase of real property owned by the Hope Newton Trust. The Trust had executed, through its trustee, Claire Newton Schneider, a residential listing agreement for the property on October 3, 2013.

During January and February of 2014, the parties were negotiating the amount of credit for repairs. On February 9, the Trust's listing agent informed Izadpanahi that the seller would not provide credits for repairs that exceeded \$6,000. O'Keefe and Daff instructed Idzapanahi to cancel the escrow; the forms were completed and the escrow agent informed of the cancellation on February 10.

Izadpanahi alleged that, during this entire period, Daff was in communication with another real estate agent, Pezzini, concerning the property, and that O'Keefe and Daff contacted Pezzini on the same day the escrow was cancelled to discuss a new escrow on the property. He further alleged that O'Keefe and Daff called Schneider on February 11 to re-open discussions about purchasing the property. They submitted a new offer, to which the seller responded with a counter on February 14. Izadpanahi had sent an email to O'Keefe and Daff indicating that he felt entitled to the commission on the sale; when the escrow closed in March 2014, the commission was paid to Pezzini as the buyer's agent.

The Second Amended Complaint asserted four causes of action: intentional interference with prospective economic advantage; conspiracy; breach of contract; and breach of the covenant of good faith and fair dealing.¹ Schneider and the Trust demurred; the trial court heard the demurrer on March 25, 2015, took the matter under submission, and sustained the demurrer without leave to amend on April 2, 2015. The court entered the dismissal on April 16, 2015. Izadpanahi appealed.

DISCUSSION

1. Standard of Review

“On review of a ruling on demurrer, we exercise our independent judgment on whether, as a matter of law, the complaint states a cause of action. [Citations.] We accept as true the properly pleaded material facts but do not assume the truth of contentions, deductions or conclusions of fact or law. [Citations.] We examine the complaint’s factual allegations to determine whether they state a cause of action on any available legal theory.” (*Coldwell Banker Residential Brokerage Co., Inc. v. Superior Court* (2004) 117 Cal.App.4th 158, 163; accord, *Loeffler v. Target Corp.* (2014) 58 Cal.4th 1081, 1100.)

2. Appellant Failed to State A Cause of Action For Intentional Interference with Prospective Economic Advantage

To state a claim for intentional interference with prospective economic advantage, the complaint must allege the existence of a relationship between plaintiff and a third party providing probable future economic benefit to plaintiff, the defendant’s knowledge of that relationship, and action by defendant which was designed to, and actually interfered with that relationship, causing damage to plaintiff. (*Buckaloo v. Johnson* (1975) 14 Cal.3d 815, 827.) In addition, the plaintiff must plead that the defendant

¹ Respondents in this appeal are the trust and Schneider, its trustee. As no other defendant is a party to this appeal, the discussion is limited to respondents.

“engaged in conduct that was wrongful by some legal measure other than the fact of the interference itself.” (*Della Penna v. Toyota Motor Sales* (1995) 11 Cal.4th 376, 393.)²

The meaning of that additional requirement, left unclear in *Della Pena*, is now clear: “an act is independently wrongful if it is unlawful, that is, if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard.” (*Korea Supply, supra*, 29 Cal.4th at 1159.)

Appellant has failed to allege any such independently wrongful act against the Trust or the trustee. His allegations are limited to Schneider having conversations with the prospective purchasers and their new agents after the initial escrow was cancelled, and countering the purchaser’s new offer, allegedly offering credit for repairs in excess of the amount which she had previously refused to exceed. She also paid the commission, a portion of which went to the successful agent. Appellant identifies none of these acts as independently wrongful within the meaning of *Korea Supply*; indeed his briefing to this Court is devoid of any analysis of this claim.

“When an issue is unsupported by pertinent or cognizable legal argument it may be deemed abandoned and discussion by the reviewing court is unnecessary. [Citations.]” (*Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699-700.) “[P]arties are required to include argument and citation to authority in their briefs, and the absence of these necessary elements allows this court to treat appellant’s issue as waived.” (*Interinsurance Exchange v. Collins* (1994) 30 Cal.App.4th 1445, 1448.) Appellant has not demonstrated the viability of this cause of action against respondents.

² In *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1154, (*Korea Supply*) the Court made clear that the elements of the tort described in *Buckaloo* were not abandoned in *Della Penna*, but rather supplemented with the requirement of wrongful acts.

C. Appellant Failed to State A Cause of Action For Conspiracy

“Conspiracy is not a cause of action, but a legal doctrine that imposes liability on persons who, although not actually committing a tort themselves, share with the immediate tortfeasors a common plan or design in its perpetration.” (*Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 510-511 [finding no cause of action for conspiracy by a party to interfere with its own contract].)

The critical element missing in the Second Amended Complaint is any allegation that the Trust, or the trustee, participated in any conspiracy. Paragraphs 36-38, in detailing the conspiracy, alleged only agreements between O’Keeke, Daff, and Pezzini. Thus, even if the complaint could be read to allege an agreement to commit a tort, it cannot be read to allege that these respondents were parties to that agreement. The demurrer was properly sustained.

D. Appellant Has Not Alleged A Contract With The Trust or The Trustee

The third and fourth causes of action, for breach of contract and breach of the covenant of good faith and fair dealing, each require the existence of a contract between appellant and respondents; in the absence of a contract there can be no breach of the contract or the implied covenant. The allegation that such a contract exists refers exclusively to the Residential Listing Agreement, which the Trust entered with its listing broker. Appellant is not named in, or a signatory to, that agreement. (Complaint, Ex. B.)³ Appellant alleged, however, that paragraph 4 of that agreement documents respondent’s agreement to pay the buyer’s agent.

³ The Clerk’s Transcript did not contain the exhibits to the complaint. At this court’s request, the Superior Court file was transmitted to this court, permitting review of the Second Amended Complaint in its entirety. On that review, this court noted a discrepancy in the pleading, and directed appellant to explain the basis for the discrepancy. This Court accepts that explanation, and will disregard for purposes of analysis the language contained in the Clerk’s transcript that was not in the complaint filed with the trial court.

An examination of the agreement demonstrates that the allegation of the complaint directly contradicts the language in the document. The listing agreement was entered between the Trust and Century 21 Valley Properties. Paragraph 4 contains the agreement of seller to pay Century 21 a commission, irrevocably assigning those funds from the escrow proceeds, and contains the following language with respect to other brokers: “Seller has been advised of Broker’s policy regarding cooperation with, and the amount of compensation offered to, other brokers. (1) Broker is authorized to cooperate with and compensate brokers participating through the multiple listing service(s) (“MLS”) by offering to MLS brokers out of Broker’s compensation specified in 4A, either [x] 2.250 percent of the purchase, or [] \$[]. (2) Broker is authorized to cooperate with and compensate brokers operating outside the MLS as per Broker’s policy.”

Despite that language, appellant argues the contract should be construed as an agreement to which he is a party. We cannot accept that construction. When reviewing whether a plaintiff has properly stated a cause of action for breach of contract, we must determine whether the alleged agreement is “reasonably susceptible” to the meaning ascribed to it in the complaint. (*Hervey v. Mercury Casualty Co.* (2010) 185 Cal.App.4th 954, 964.) “So long as the pleading does not place a clearly erroneous construction upon the provisions of the contract, in passing upon the sufficiency of the complaint, we must accept as correct plaintiff’s allegations as to the meaning of the agreement.” [Citation.]” (*Aragon-Haas v. Family Security Ins. Services, Inc.* (1991) 231 Cal.App.3d 232, 239 (*Aragon-Haas*); see also *Connell v. Zaid* (1969) 268 Cal.App.2d 788, 795 [“in considering a pleading attacked by general demurrer,” plaintiff’s “construction of . . . [the contract] should be accepted, if such construction be reasonable”].)

The contract is not reasonably susceptible to the meaning alleged in the complaint. The assertion that the Trust agreed to pay the buyer’s agent, and therefore that appellant, as the agent who first presented an offer from the ultimate buyers, should be treated as a party to the agreement, is belied by the language used: Schneider authorized her broker to pay, from the funds irrevocably taken from the sale proceeds and distributed to that broker through escrow, a portion of the commission to the participant brokers. This

language does not support a construction that any participating broker became a party to the agreement.⁴

Appellant also appears to argue that as seller, the Trust was responsible if the wrong person was paid. He admits that the seller paid the commission, but asserts that the funds were released to Pezzini. Accepting that allegation for purposes of analysis, it is not sufficient to impose liability on the seller. The agreement on which Izadpanahi relies obligates the seller to pay its broker, and makes it the obligation of that broker to determine the proper recipient with whom to share the commission. The seller's obligation is, through escrow, to pay the listing broker. As the complaint alleges the commission was in fact paid, there remains no claim against the seller. (See, e.g., *Colbaugh v. Hartline* (1994) 29 Cal.App.4th 1516, 1525 [where the right person to receive the commission under the listing agreement was the listing agent, and that commission was paid, there is no claim against the seller].)

Appellant has failed to demonstrate any basis on which he can recover as a party to the contract; the demurrer was properly sustained.⁵

⁴ Appellant made no claim, here or in the trial court, that he should be treated as a third party beneficiary of the agreement; he has waived any argument in that regard.

⁵ The parties argued in their briefs that appellant lacked standing to seek to recover the commission in any event, as it is a broker, not an agent, who has that right. As appellant sought below to allege an assignment, we have evaluated his claims as if he had received an assignment of his employing broker's rights; for the reasons stated above, even if standing is presumed appellant has failed to state a cause of action as against these respondents.

DISPOSITION

The judgment is affirmed. Respondents are to recover their costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

KEENY, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.